



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Miami Tribe of Oklahoma – Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Miami Tribe of Oklahoma – Liquor Control Ordinance. This Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Miami Tribe of Oklahoma, increases the ability of the tribal government to control the distribution and possession of liquor on their trust land, provides an important source of revenue and strengthens tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Diane Buck, Acting Tribal Government Officer, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, P.O. Box 8002, Muskogee, OK 74402, Telephone: (918) 781-4685; Fax: (918) 781-4649; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, D.C. 20240; Telephone (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463

U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Business Committee of the Miami Tribe of Oklahoma adopted Resolution 13-37, A Resolution adopting the Miami Tribe of Oklahoma Liquor Control Ordinance, on July 9, 2013. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Business Committee of the Miami Tribe of Oklahoma adopted Resolution 13-37, A Resolution Adopting the Miami Tribe of Oklahoma Liquor Control Ordinance, on July 9, 2013.

Dated: August 30, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs

The Miami Tribe of Oklahoma – Liquor Control Ordinance reads as follows:

Article I. Introduction

Section 1. Title. This Ordinance shall be known as the Miami Tribe of Oklahoma Liquor Ordinance.

Section 2. Authority. This Ordinance is enacted in compliance with the Act of August 15, 1953, 67 stat. 586, codified at 18 U.S.C. 1161, and by the Business Committee for the Miami Tribe of Oklahoma. The Miami Tribe of Oklahoma is a federally recognized, sovereign tribal government organized under the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), with a Constitution and By-Laws approved by the U. S. Secretary of Interior on August 16, 1939, and amended and approved by the U. S. Secretary of Interior on February 22,

1996. This Ordinance is approved and enacted by the Business Committee of the Miami Tribe of Oklahoma under the authority of Article VI, Section 1 of the Constitution of the Miami Tribe of Oklahoma, wherein “[t]he Business Committee shall have the power to...enact resolutions and ordinances....”

Section 3. Territory and Jurisdiction. Pursuant to Article II of the Constitution of the Miami Tribe of Oklahoma, “[t]he authority and jurisdiction of the Tribe shall extend to all the territory within the boundaries now known as MIAMI LANDS, which include land in Northeast Oklahoma and the original Miami Reservation in Eastern Kansas, and to all lands that may be acquired for the Miami Tribe of Oklahoma by the United States Government or which may be acquired by the Miami Tribe for its land base and to all Indian Country of the Miami Tribe and its citizens as of now or hereafter as defined by Federal Law. The Miami Tribe of Oklahoma may exercise its authority and Jurisdiction outside the territory above described to the fullest extent not prohibited by Federal law.

Section 4. Purpose. The purpose of this Ordinance is to regulate and control the possession and sale of liquor and alcoholic beverages as defined by this Ordinance, at designated locations within the Tribe’s casino operations on Miami Tribe of Oklahoma Trust Land. The enactment of a tribal ordinance governing liquor and alcoholic beverages possession and sale on the Miami Tribe of Oklahoma Trust land, will increase the ability of the tribal government to control the sale, distribution and possession of liquor and alcoholic beverages on Miami Tribe of Oklahoma Trust Land, and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 5. Application of 18 U.S.C. 1161. The introduction, possession, and sale of liquor and alcoholic beverages on the Miami Tribe of Oklahoma Trust Land is a matter of special

concern to the Miami Tribe of Oklahoma. Federal law requires that any authorization for the sale of liquor or other alcoholic beverages must in conformity with the laws of the State and approved by an ordinance (law) duly adopted by the tribe having jurisdiction over such area of Indian Country. All acts and transactions under law of the Miami Tribe of Oklahoma shall be in conformity with federal law and with the laws of the State of Oklahoma as applicable.

Article II. Definitions

As used in the Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

- (a) *Alcohol*. That substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
- (b) *Alcoholic Beverage*. A term synonymous with the term liquor as defined in Article II (f) of this chapter.
- (c) *Bar*. Any establishment with special space and accommodations for the sale of liquor or alcoholic beverages by the glass and for consumption on the premises as herein defined.
- (d) *Beer*. Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.
- (e) *Business Committee*. The Miami Tribe of Oklahoma Tribal Business Committee.
- (f) *Liquor*. Includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin aromatic bitters, and all drinks or drinkable liquids and all

preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(h) *Malt Liquor.* Includes beer, strong beer, ale, stout and porter.

(i) *Package.* Any container or receptacle used for holding liquor.

(j) *Public Place.* Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Ordinance, Public Place shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(k) *Miami Business Regulatory Commission.* This term refers to the Miami Business Regulatory Commission (MBRC), the tax regulatory authority for the Miami Tribe of Oklahoma.

(l) *Miami Tribal Council.* The general council of the Miami Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(m) *Miami Tribe of Oklahoma Trust Land.* Those lands which are held in trust by the United States for the Miami Tribe of Oklahoma and not for any individual Indian.

(n) *Sale and Sell.* Includes exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(o) *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(p) *Tribal Court.* The District Court for the Miami Tribe of Oklahoma.

(q) *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Article III. Powers of Enforcement

Section 1. *The Miami Business Regulatory Commission.* In furtherance of this Ordinance, the Miami Business Regulatory Commission (MBRC) shall have the following powers and duties to:

- (a) Issue licenses permitting the sale or manufacture or distribution of liquor or alcoholic beverages as defined in this Ordinance on the Miami Tribe of Oklahoma Trust Land;
- (b) Publish and enforce rules and regulations adopted by the (MBRC) governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Miami Tribe of Oklahoma Trust Land;

- (c) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the MBRC to perform its functions. Such employees shall be tribal employees;
- (d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;
- (e) Bring suit in Tribal Court or the appropriate court to enforce this Ordinance as necessary;
- (f) Determine and seek damages for violation of this Ordinance;
- (g) Make such reports as may be requested or required by the Chief of the Miami Tribe of Oklahoma, who may share those reports with the Miami Tribal Council;
- (h) Collect taxes and fees levied or set by the MBRC and to keep accurate records, books and accounts;
- (i) Adopt procedures which supplement this Ordinance and regulations promulgated by the MBRC, and facilitate their enforcement. Such procedures shall include limitations on sales to minors; places where liquor or alcoholic beverages as defined by this Ordinance may be consumed; identity of persons not permitted to purchase alcoholic beverages; hours and days when outlets may be open for business; and other appropriate matters and controls; and
- (j) Request amendments to this Ordinance to address future changes in the way the Miami Tribe of Oklahoma sells, distributes or possesses alcoholic beverages as defined by this Ordinance, in order to ensure that this Ordinance remains consistent with state alcoholic beverage laws.

Section 2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the MBRC and its individual members shall not:

- (a) Accept any gratuity, compensation or other thing of value from any liquor or alcoholic beverages as defined by this Ordinance, wholesaler, retailer or distributor or from any licensee;
- (b) Waive the immunity of the Miami Tribe of Oklahoma from suit without the express consent of the Business Committee.

Section 3. *Inspection Rights.* The premises on which liquor or alcoholic beverages as defined by this Ordinance is sold or distributed, shall be open for inspection by the MBRC at all reasonable times for the purposes of ascertaining whether the rules and regulations of the MBRC and this Ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. *License Required.* Only a person or entity who is licensed by the Miami Business Regulatory Commission may make retail sales of liquor or alcoholic beverages as defined in this Ordinance, in a facility located on Miami Tribe of Oklahoma Trust Land. Patrons may consume such liquor or alcoholic beverages as defined by this Ordinance within any facility, other than a convenience store location, which holds said required license. All other purchases and sales of liquor or alcoholic beverages as defined in this Ordinance on Tribal Lands shall be prohibited. The license issued by the MBRC shall be in addition to any license required under applicable state law.

Section 2. *Sales for Cash.* All liquor or alcoholic beverages sales as defined by this Ordinance, on Miami Tribe of Oklahoma Trust Land shall be on a cash only basis, and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any liquor or alcoholic beverage as defined by this Ordinance is prohibited. Any person who is not licensed pursuant to this Ordinance, who purchases liquor or alcoholic beverages as defined by this Ordinance, on Miami Tribe of Oklahoma Trust Land, and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Miami Tribe of Oklahoma as set forth herein.

Article V. Licensing

Section 1. *Procedure.* In order to control the proliferation of establishments on Miami Tribe of Oklahoma Trust Land, all persons or entities which desire to sell liquor or alcoholic beverages as defined by this Ordinance, on Miami Tribe of Oklahoma Trust Land, must apply to the Miami Business Regulatory Commission (MBRC) for a license to sell or serve liquor or alcoholic beverages as defined by this Ordinance.

Section 2. *Application.* Any entity, or any person 21 years of age or older may apply for a license to sell or serve liquor or alcoholic beverages as defined by this Ordinance on the Miami Tribe of Oklahoma Trust Land. Any entity, or any person 21 years of age or older must complete and submit an application provided for this purpose by the MBRC, and pay such application fees as may be set from time to time by the MBRC for this purpose. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor or alcoholic beverages as defined in this Ordinance.

Section 3. *Issuance of License.* The entity or person applying for such license must make a showing to satisfy the MBRC that the entity or individual is of good character and has never

been convicted of violation of any of the state alcoholic beverage laws or the laws promulgated under this Ordinance; that the entity or individual has never been convicted of violating any of the gambling laws of Oklahoma, or any other state of the United States, or of this or any other tribe; that he has not had, preceding the date of the application for license, a felony conviction of any of the laws commonly called prohibition laws; and that he has not had any permit or license to sell any intoxicating liquors revoked in any county of Oklahoma, or any other state, or any tribe; and that at the time of his application for license, he is not a holder of a retail liquor dealer's permit or license from the United States government to engage in the sale of beverages as defined in this Ordinance.

The MBRC shall receive and process applications and documents of related matters. All actions relating to applications by the MBRC shall be by majority vote. The MBRC may issue a license if it believes that such issuance is in the best interests of the Miami Tribe of Oklahoma and its members.

Section 4. Posting of License. Licensee shall continually post in licensed establishment(s) in open and visible location any/all required liquor licenses.

Section 5. Period of License. Each license may be issued for a period not to exceed (1) one year from the date of issuance.

Section 6. Renewal of License. A licensee may renew its license if the licensee has complied in full with this Ordinance, provided however, that the MBRC may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Miami Tribe of Oklahoma.

Section 7. Revocation of License. The MBRC may suspend or revoke a license due to one or more violations of this Ordinance upon notice and opportunity for a hearing, at which time the

licensee is given an opportunity to respond to any charges against it, and to demonstrate why the license should not be suspended or revoked.

Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines, or of other adverse action proposed by the MBRC under this Ordinance, the licensee may deliver to the MBRC a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before the MBRC, or persons appointed by the MBRC, and a written decision will be issued within 15 days of said hearing. Such decision will be considered final unless appealed to the Tribal Court as provided by Tribal law.

Section 8. Transferability of Licenses. Licenses issued by the MBRC shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There may hereby be levied and collected a tax on each retail sale of liquor or alcoholic beverages as defined by this Ordinance on Miami Tribe of Oklahoma Trust Land. All taxes from the sale of liquor and alcoholic beverages as defined by this Ordinance on Miami Tribe of Oklahoma Trust Land shall be paid over to the general treasury of the Miami Tribe of Oklahoma. Licensee must obtain and maintain documents or receipts evidencing taxes paid.

Section 2. Taxes Due. All taxes for the sale of liquor or alcoholic beverages as defined by this Ordinance on the Miami Tribe of Oklahoma Trust Land are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

Section 3. Remedies Not Limited. In addition to any other remedies provided in this Ordinance, the MBRC may suspend or revoke any licenses issued by it upon failure of the

licensee to comply with the obligations imposed upon the licensee by the MBRC, by the Miami Tribe of Oklahoma, or any rule, regulation or order of the MBRC.

Section 4. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor as defined by this Ordinance, as well as for the taxes collected.

Section 5. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of liquor or alcoholic beverages as defined by this Ordinance on Miami Tribe of Oklahoma Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Business Committee, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations and Enforcement

Section 1. In any proceeding under this Ordinance, conviction of one unlawful sale or distribution of liquor or alcoholic beverages as defined by this Ordinance shall establish prima facie intent of unlawfully keeping liquor for sale, selling beverages or distributing beverages in violation of this Ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor or alcoholic beverages as defined by this Ordinance, or who shall operate or shall have liquor or alcoholic beverages for sale and/or in his possession without a license, shall be guilty of a violation of this Ordinance.

Section 3. Any person on Miami Tribe of Oklahoma Trust Land who buys liquor or alcoholic beverages as defined in this Ordinance, from any person other than a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 4. Any person who keeps or possesses liquor or alcoholic beverages upon his person, or in any place or on premises conducted or maintained by his principal or agent, with the intent to sell or distribute it contrary to the provisions of this Ordinance, shall be guilty of a violation of this Ordinance.

Section 5. Any person who knowingly sells liquor or alcoholic beverages to a person who is obviously intoxicated or appears to be intoxicated, shall be guilty of a violation of this Ordinance.

Section 6. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor or alcoholic beverages in any public conveyance, shall be guilty of an offense. Any person who shall drink liquor or alcoholic beverages in a public conveyance, shall be guilty of a violation of this Ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage as defined in this Ordinance.

Section 8. No person shall permit any other person under the age of 21 to consume liquor or alcoholic beverages on his premises or any premises under his control. Any person violating this section shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 9. Any person who shall sell or provide any liquor or alcoholic beverage to any person under the age of 21 years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 10. Any person who transfers in any manner an identification of age to a person under the age of 21 years, for the purpose of permitting such person to obtain liquor or alcoholic beverages, shall be guilty of a violation of this Ordinance.

Section 11. Any person who attempts to purchase liquor or alcoholic beverages through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years, shall be guilty of violating this Ordinance.

Section 12. Any person who is convicted or pleads guilty to a violation of this Ordinance shall be punished by imprisonment for not more than one (1) year; a fine not to exceed Five Thousand dollars (\$5,000.00); or a combination of both penalties. In addition, if such person holds a license issued by the MBRC, the license shall be revoked. This provision mirrors penalties referenced in the Miami Tribe of Oklahoma Criminal Code Sections 536 and 537 as amended.

Section 13. When requested by the provider of liquor or alcoholic beverages as defined by this Ordinance, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

- (1) Driver's license or identification card issued by any state department of motor vehicles;
- (2) United States Active Duty Military I.D.; or
- (3) Passport.

Section 14. The consumption of liquor or alcoholic beverages on premises where such consumption or possession is contrary to the terms of this Ordinance, will result in a declaration that such liquor or alcoholic beverages are contraband. Any tribal agent, employee or officer who is authorized by the MBRC shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property.

Section 15. Upon being found in violation of the Ordinance, the party owning or in control of the premises where contraband is found, shall forfeit all right, title and interest in the items seized, which shall become the property of the MBRC.

Article VIII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor or alcoholic beverages as defined in this Ordinance are sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chairman of the MBRC or, if the Chairman fails or refuses to do so, the MBRC, by majority vote, shall institute and maintain in Tribal Court, in the name of the Miami Tribe of Oklahoma, an action to abate and perpetually enjoin any nuisance declared under this Section. In addition to all other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year, or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Miami Tribe of Oklahoma, and conditioned that liquor or alcoholic beverages as defined in this Ordinance will not be thereafter kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed thereof in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Miami Tribe of Oklahoma under this Ordinance.

Article IX. Severability, Effective Date, and Non-Impairment

Section 1. If any provision or application of this Ordinance is determined by a court of competent jurisdiction to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. Once this Ordinance has been signed into law by the Chief and Secretary/Treasurer, this Ordinance shall be effective on such date as the Secretary of the United States Department of Interior certifies this Ordinance and publishes the same in the *Federal Register*.

Section 3. Any and all previous statutes, laws and ordinances of the Miami Tribe of Oklahoma which are inconsistent with this Ordinance are hereby repealed and rescinded.

Section 4. Nothing in this Ordinance may be construed to diminish or impair in any way the rights or sovereign powers of the Miami Tribe of Oklahoma or its tribal government.

Article X. Amendment

This Ordinance may only be amended by a vote of the Miami Tribe of Oklahoma Business Committee and shall be effective when it meets the requirements of Article IX, Section 2, above.